

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

ERIC D. SMITH,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 3:07-CV-311 TS
)	
WILLIAM K. WILSON,)	
)	
Respondent.)	

OPINION AND ORDER

Eric D. Smith, a *pro se* prisoner, filed this habeas corpus petition in the Southern District of Indiana attempting to challenge his loss of earned credit time and his demotion from credit class II to credit class III on June 18, 2002, by the Westville Correctional Facility Disciplinary Hearing Board for committing a battery without a weapon and being a habitual rule violator in violation of B-212 and A-105. Smith previously filed a habeas corpus petition challenging this same prison disciplinary proceeding in *Smith v. Wilson*, 3:07-cv-155 (N.D. Ind. filed April 4, 2007); final judgment was entered in that case on May 3, 2007. It is currently pending on appeal in *Smith v. Wilson*, 07-2144 (7th Cir. filed May 17, 2007).

Regardless of whether the claims that Smith is now attempting to present are new or whether the were presented in his previous petition, this petition must be dismissed. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). Therefore any claims previously presented must be dismissed.

Additionally, for any claim not previously presented,

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3). Here, Smith has not obtained an order from the court of appeals permitting him to proceed with any previously unpresented claims. “A district court *must* dismiss a second or successive petition . . . unless the court of appeals has given approval for its filing.” *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). Therefore any previously unpresented claims must also be dismissed.

For the foregoing reasons, the habeas corpus petition is **DISMISSED** for want of jurisdiction and the *in forma pauperis* petition is **DENIED**.

SO ORDERED on July 19, 2007.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION